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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/637,529	08/11/2000	Robert C. Beck	1480	8331

7590 11/19/2002

ROBERT C. BECK  
BECK & TYSVER  
2900 THOMAS AVE S #100  
MINNEAPOLIS, MN 55416-4463

EXAMINER	
DESAMTO, MATTHEW F	
ART UNIT	PAPER NUMBER

3763

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/637,529	BECK, ROBERT C. <i>SM.</i>
Period for Reply	Examiner	Art Unit
	Matthew F DeSanto	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 04 September 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 11-26 is/are pending in the application.
- 4a) Of the above claim(s) 15-18 and 20 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 11-14, 19 and 21-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 04 September 2002 is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on September 04, 2002 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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3. Claims 11-14 and 19, 21-23, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Neracher (USPN: 5135482). Neracher discloses an ablation catheter having a catheter having a body and catheter body have a distal tip where the distal tip has a first maximal diameter, a sheath having a internal lumen where the lumen has a diameter substantially equal to the first diameter of the ablation catheter, and where the ablation catheter is located within the sheath and adapted for motion with respect to the sheath, whereby the ablation catheter body can be moved independently of the sheath. Neracher teaches two types of internal diameter of the sheath with the ablation catheter (column 2, lines 13-53, Figures 2, 3 and 12).

He also teaches a catheter body having a proximal and distal end, where the catheter body defines an axis, and the distal end having an approximately circular cross section, with a high pressure lumen in the catheter body terminating near the distal end and the annular aperture defining a first aperture defining a first aperture direction for the emerging flow that lies between approximate zero degrees and one hundred and eighty degrees, where the annular aperture cooperating with the catheter body to direct an annular sheet of fluid emerging from the aperture along the catheter body such that the distal end is substantially encircled with fluid from the aperture (Figures 2,4, and 12); as well as where a control body surface located immediate adjacent the aperture, providing a barrier located proximate the aperture, for limiting fluid entrainment from the location of the control body, near the aperture by the jet emerging from the aperture, whereby the jet is deflected by a pressure difference across the barrier,(Figures 6 and 9) and wherein a tangent drawn to the control body surface at the location of the

aperture is parallel to the aperture direction (Figure 4) and where the tangent drawn to the control body to the aperture is greater than zero degrees, but less than ninety degrees, (Figure 10 and entire reference).

He also teaches a extraction catheter system for removing embolic material where a catheter having a catheter body having a distal end and a proximal end and having an interior and an exterior surface, a sheath having a sheath lumen adapted to receive and a guide a catheter, a fluid supply lumen in the catheter body, a fluid port connecting the fluid supply lumen with the exterior surface of the catheter body, the fluid port and the body cooperating to attach fluid ejected from the fluid port to the body, whereby the fluid ejected by the port mixes with embolic material and follows the catheter body in a retrograde direction, transporting the fluid and embolic material into the sheath lumen; wherein the catheter distal end is located outside the sheath lumen, (Figures 3, 4 and 12 and entire reference).

4. Claims 23, 24 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Willard et al. (USPN 5536242). Willard et al. discloses a extraction catheter system for removing embolic material where a catheter having a catheter body having a distal end and a proximal end and having an interior and an exterior surface, a sheath having a sheath lumen adapted to receive and a guide a catheter, a fluid supply lumen in the catheter body, a fluid port connecting the fluid supply lumen with the exterior surface of the catheter body, the fluid port and the body cooperating to attach fluid ejected from the fluid port to the body, whereby the fluid ejected by the port mixes with embolic material and follows the catheter body in a retrograde direction, transporting the fluid

and embolic material into the sheath lumen; wherein the catheter distal end is located inside the sheath lumen (Column 6, lines 11-41, and Column 7, lines 23-62 and Figure 2A).

He also teaches a method of using a catheter system to remove material advancing a sheath having a sheath lumen to a location to a location near the material to be removed, advancing a catheter of the type having a fluid port to eject fluid thus creating a retrograde flow, through the sheath lumen to a location near material to be removed, injecting fluid into the catheter causing fluid to emerge from the catheter, entraining material location near the catheter, and removing the fluid and entrained flow from the sheath lumen. (Column 6, lines 11-41, Column 7, lines 23-62 and Column 13, lines 28-60).

### ***Response to Arguments***

1. Applicant's arguments filed September 4 2002 have been fully considered but they are not persuasive.
2. As to the election restriction, the figures elected in Paper number 5, are Figures 1 and 2. The claims drawn to these figures are 11-14, 19, 21-26, and the claims withdrawn are claims 15-18 and 20 as being drawn to an non-elected species. The reasons being that the claims are withdrawn because they deal with different apertures, which are taught, in Figure 5.
3. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

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(i.e., input and output pumps) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Therefore, as the claims stand, the prior art references read on the claims because the catheter has a first supply rate, which is on exclusively determined by the first supply rate.

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 8:30-6:00.

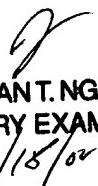
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 1-703-872-9302 for regular communications and 1-703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-0858.



Matthew DeSanto  
Art Unit 3763  
November 15, 2002



ANHTUAN T. NGUYEN  
PRIMARY EXAMINER  
11/18/02